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Sub-Commission on the Promotion
and Protection of Human Rights
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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Written statement* submitted by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[9 July 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Universal Declaration of Human Rights: national practice and international standards

1. The Durban Conference's Programme of Action "recommended that the Commission prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects."

2. We have highlighted in the past the need for universal standards as a framework for a pluralistic world society where people from so many different nations and cultures intermingle with increasing frequency. This need was reaffirmed in the 1993 Vienna Declaration, which stressed that: "*...the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promotion of democracy, development and respect for human rights and fundamental freedoms in the entire world.*" (I:8)

3. The relevance of world law as the framework for a world society is increasingly under question as a variety of forces have come together to question the globalization and economic structures of the world society. There is a danger that the opposition to world trading rules, as expressed by the World Trade Organization, will develop into an opposition to all world law, including human rights and humanitarian law. Therefore, we must be extremely vigilent that world standards not be undermined by calling into question the universality of human rights standards.

4. A crucial aspect in the establishment of universality has been to bring national legislation into conformity with universal human rights standards, as expressed in the International Bill of Human Rights. By and large, States that ratified International Covenants modified national legislation when it was not in conformity. However, some of us recall the heated debate in the Commission back in 1994, when the Report of the then Special Rapporteur on Sudan, Dr. Gaspar Biro, called upon "the Government of Sudan to bring its legislation into accordance with international instruments to which it is a party". The Sudanese government considered this criticism of its *shari'a*-based Penal Legislation an "attack on Islam", invoking the UDHR's "freedom of religion". Dr. Biro was threatened both at the Commission and the General Assembly, until a December 1995 General Assembly Resolution directly referred to "the unacceptable threat against his person."

5. The aspect of universality which most concerns this Sub-Commission, the representatives of Governments, and NGOs, is the relation between national practice and international standards. The work of Special Rapporteurs, as well as that of the treaty bodies, concerns the relation between standards and practice. This crucial work can be carried out only if there is agreement on the primacy and universality of human rights standards.

6. Bringing practice into conformity with international standards requires an understanding - by as wide a public as possible - of the Universal Declaration of Human Rights. Such understanding needs to build upon the values, experience, and hopes of as many people as possible. This is confirmed by the many efforts at education and training being carried out in the current Decade for Human Rights Education. The basic values of people - religious and philosophical -play an important role in their understanding of human rights. However, we must be careful to distinguish the respective role of values and world law as expressed by International Covenants and other UN treaties.

7. Human Rights advocacy can be built upon religious and philosophical principles. "Thou shalt not kill!" is a motivation to work for the abolition of the death penalty, but we must also work with those who strive for abolition on non-philosophical but pragmatic grounds: the death penalty does not work as a deterent. Likewise, we may strive for the equality in practice of women and men because we believe that both were created by God with the same spirit, but we must also work with those who stress that equal pay for equal work is necessary so as not to distort market forces.

8. Once an agreement is reached and put into legal form there is little point to discuss whether the motivation for the legislation was spiritual or material. What is important is its acceptance and implementation. These comments on the relation between values and world law on human rights are necessary to avoid intellectual confusion between them.

9. Two conferences held at the Palais des Nations make this more than an intellectual excercise. In November 1998 the Office of the High Commissioner for Human Rights co-sponsored with the Organization of the Islamic Conference (OIC) a special seminar, entitled: Enriching the Universality of Human Rights: Islamic Perspectives on the Universal Declaration of Human Rights. On 14-15 March 2002, the OIC hosted alone a second seminar on Human Rights in Islam when many of the same issues were debated. The statement of the High Commissioner is noteworthy.

10. It is always intellectually interesting to see the way in which a religious tradition deals with important issues. Thus, many of us who are not Roman Catholics, nevertheless, read some of the debates of the Vatican Council II to try to understand how a religious body tries to deal with new currents of thought and new problems, while remaining faithful to what it considers to be a revelation of divine intent. Likewise, it is interesting to listen to discussions on the relation between the sacred, as announced in the Qur'an and political structures.

11. However, already in 1998, some worried that the seminar was not just an intellectual analysis, but foreshadowed what a Muslim researcher at the University of Geneva, Mr. Hasni Abidi, called, in an article: "Les Droits de l'homme à la carte": "*Allons-nous vers une nouvelle Déclaration universelle des droits de l'homme? ... Mary Robinson ne partage sûrement pas les propos tenus lors de ce séminaire, mais accepter ce type de manifestation risque d'ouvrir une brèche dans l'universalité des droits de l'homme. Pire, ce séminaire pourrait constituer une caution à des politiques contraires aux principes fondateurs des droits de l'homme de la personne humaine.*" (*Tribune de Genève*, 25 November 1998) (*)

["*Are we going toward a new Universal Declaration of Human Rights? Mary Robinson surely doesn't share the viewpoints expressed during this seminar, but accepting this type of manifestation risks opening a breach in the universality of human rights. Worse, this seminar could constitute support for political attitudes totally in contradiction with the founding principles of human rights.*"]

12. Today there are ongoing, controversial debates within Islamic countries concerning what is covered by the *shari'a*, the nature of the State's legal system, the nature of the authority for its legal codes, and the modalities for modifying them.

13. No matter how interesting the largely Roman Catholic inspiration for the natural law theory, we must insist that universal human rights treaties are not based on theories of natural law and that to justify human rights by a natural law theory can only lead to a breakdown of universality. Likewise, we must insist that universal human rights cannot be a reflection of Islamic revelation, nor an outgrowth of *shari'a*. In all religious traditions, there are some values stressing the dignity of the human person, and these are to be welcomed, just as in all societies there are popular techniques to limit arbitrary power on authority. There are still many different legal traditions active in many societies, and they merit the attention of anthropologists and legal scholars.

14. In conclusion, the Association for World Education wishes to draw the attention of the Sub-Commission to its written statement on The 1990 Cairo Declaration on Human Rights in Islam (E/CN.4/2000/NGO/3). The existence of such diverse legal systems must not detract us from upholding universal standards and world law. That is our common task at this Sub-Commission: Governments, NGOs, and the Secretariat.

(*) Cf. David Littman, "Universal Human Rights and 'Human Rights in Islam'" (*Midstream*, New York, February-March 1999, pp. 2-7).